

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No. : 10/577,579 Confirmation No. 7474
Applicant : Xiang ma
Filed : 4/27/2006
TC/A.U. : 2188
Examiner : Duc T. Doan
Docket No. : 42P22768
Customer No. : 8791
Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Office Action dated June 19, 2009, Applicant would like to request a pre-appeal panel review of the Final Office Action.

Claims 1-20 are pending in the present application. In the Final Office Action, the Examiner rejected claims 1-4, 8-9, 13, and 15-20 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2004/0158828 issued to Zimmer et al. (hereinafter Zimmer); claims 5-7, 10-12, and 14 under 35 U.S.C. §103(a) as being unpatentable over Zimmer in view of U.S. Patent Publication No. 2005/0210158 issued to Cowperthwaite (hereinafter Cowperthwaite). Even if, hypothetically, the cited prior art, Zimmer and Cowperthwaite, were to be combined in the manner alleged by the Examiner, this hypothetical combination would still fail to teach all the elements recited in the claims. Thus, Applicant respectfully traverses the rejection and contends that the Examiner has not established a *prima facie* case of anticipation and obviousness.

There are several clear errors in the Examiner's rejection and arguments, discussed below.

I. Zimmer does not disclose or suggest "initializing a plurality of media devices in communication with a computing device," as delineated in independent claims 1, 9 and 18.

Applicant refers to the response filed on May 4, 2009. Among other things, with respect to claims 1, 9 and 18, Applicant contends that the Examiner failed to identify: "initializing a plurality of media devices in communication with a computing device" in Zimmer.

The Examiner states that: “Applicant... mistakenly equates the BIOS firmware as the device and thus, not capable of storing video or audio data. Zimmer clearly teaches the media devices comprises physical component such as hard disks, CD ROMs capable of storing any information, i.e. capable of storing for example music audio data, see par. 5. The media devices, i.e., hard disks, CD ROMs include code to facilitate accessing information stored therein, i.e., each component may have optional ROMs, “...BIOS may be extended using one or more periphery device cards... For example, SCSI device driver cards and video cards often include an option ROM...” see par. 4” (Final Office Action, page 12).

Applicant respectfully disagrees and submits that Zimmer merely discloses that various portions of the single set of code are being used to initialize different system components, while other portions are being used for run-time (i.e., post-boot) operations (Zimmer, par. [0004]). *Emphasis Added.* Applicant submits that, as delineated in the Specification, “the term “media device” refers to any on-board or plug-in device, such as video cards, music players, or DVD players, for example, that is capable of storing video or audio data, such as movies, songs, etc.” (See Specification, par. [0013] for further details). *Emphasis Added.* There is no teaching that the system components initialized using various portions of the firmware code are a plurality of media devices, as delineated in the claims.

Additionally, Zimmer merely discloses EFI enabling firmware to be loaded from a variety of different resources including option ROMs, and various persistent storage devices (e.g., hard disks, CD ROMs, etc.) (Zimmer, par. [0005]). Applicant respectfully submits that the option ROMs, hard disks, and CD ROMs cannot correspond to the media device as delineated in the claims because there is no teaching of initializing the option ROMs, hard disks, or CD ROMs. Instead, Zimmer discloses loading firmware from the option ROMs, hard disks, or CD ROMs.

Moreover, Applicant respectfully disagrees with the Examiner’s allegation regarding claim 9 that Zimmer teaches “a plurality of media devices in communication with a computing device and adapted for initialization by the computing device”, citing Zimmer, paragraph [0003]. Zimmer, paragraph [0003], merely states: “In a typical PC architecture, the BIOS is generally defined as the firmware that runs between the processor reset and the first instruction of the Operating System (OS) loader. This corresponds to the startup operations performed during a cold boot or in response to a system reset. At the start of a cold boot, very little of the system

beyond the processor and firmware is actually initialized. It is up to the code in the firmware to initialize the system to the point that an operating system loaded off of media, such as a hard disk, can take over" (Zimmer, par. [0003]). *Emphasis Added.*

As stated in Zimmer, BIOS is firmware. Since firmware is not a device capable of storing video or audio data, such as movies, songs, the BIOS cannot correspond to "a plurality of media devices."

Additionally, Appellant believes that the hard disk cannot be considered as the "media devices" as delineated in the claims. Zimmer merely describes an OS being loaded off of media such as hard disk. In contrast, the claims recite "initializing a plurality of media devices."

Moreover, Zimmer describes a pre-boot environment wherein the OS is being loaded off the hard disk (Zimmer, par. [0003] and [0005]). However, the pre-boot environment occurs before the hard disk drive is initiated. Accordingly, given Zimmer's pre-boot environment, there is no teaching of initializing the media such as the hard disk.

Accordingly, Applicant respectfully submits that Zimmer fails to teach this element of independent claims 1, 9, and 18.

II. Zimmer does not disclose or suggest "operating the initialized media devices based on the mapped information corresponding to each operated media device while the computing device is in a pre-OS environment," as delineated in independent claims 1, 9 and 18.

Applicant refers to the response filed on May 4, 2009. Among other things, with respect to claims 1, 9 and 18, Applicant contends that the Examiner failed to identify: "operating the initialized media devices based on the mapped information corresponding to each operated media device while the computing device is in a pre-OS environment," in Zimmer.

Zimmer merely discloses that, with reference to FIG. 1, in response to a cold boot or system reset, the instruction pointer of a computer system's microprocessor is directed to the first instruction in a set of platform initialization firmware code 110 that is stored on a firmware device (FD) 0. This firmware device, often referred to as the BIOS chip, comprise the boot firmware device (BFD) for the system. Execution of the platform initialization firmware begins at a reset code portion 112, and proceeds sequentially until all of the firmware to initialize the computer system has been executed (Zimmer, par. [0016]).

The Examiner alleges that Zimmer discloses the devices are being operated for booting up the system (Office Action, page 4) such that Zimmer allegedly teaches “operating the initialized media devices based on the mapped information corresponding to each operated media device while the computing device is in a pre-OS environment”, as delineated in claims 1, 9, and 18. Applicant respectfully disagrees.

In the pre-boot in Zimmer, the computer’s microprocessor is sequentially executing the instructions in the firmware code 110 that is stored in the BIOS chip to initialize the computer system. As discussed above, the term “media device” refers to a device that is capable of storing video or audio data, such as movies, songs, etc. Accordingly, executing firmware code 110 stored on the BIOS chip cannot correspond to “operating the initialized media devices” as delineated in the claims.

Additionally, regarding the system components (Zimmer, par. [0004]), even assuming the system components are media devices, there is no teaching of operating these system components while the computing device is in a pre-OS environment, as delineated in the claims. Similarly, even assuming that the option ROMs, hard disks, or CD ROMs are media devices as delineated in the claims, there is no teaching of operating the option ROMs, hard disks, or CD ROMs while the computing device is in a pre-OS environment, as per the independent claims.

Applicant further submits that a *prima facie* case of anticipation has not been established for dependent claims 2-4, 8, 13, 15-17, and 19-20. However, based on the dependency of claims 2-4, 8, 13, 15-17, and 19-20 on independent claims 1, 9, and 18, respectively, which are believed to be in condition for allowance, Applicant respectfully submits that claims 2-4, 8, 13, 15-17, and 19-20 are believed to be allowable for at least the reasons set forth above.

Accordingly, Applicant respectfully submits that Zimmer fails to teach this element of independent claims 1, 9, and 18.

III. Zimmer does not disclose or suggest elements as delineated in independent claims 1, 9 and 18 such that a combination of Zimmer with Cowperthwaite in rejecting claims dependent thereon is improper.

Applicant refers to the response filed on May 4, 2009. Among other things, Applicant submits that a *prima facie* case of obviousness has not been established for dependent claims 5-7, 10-12 and 14. However, based on the dependency of claims 5-7, 10-12 and 14 on independent claims 1, 9, and 18, respectively, which are believed to be in condition for allowance, Applicant

respectfully submits that claims 5-7, 10-12 and 14 are believed to be allowable for at least the reasons set forth above.

Accordingly, Applicant respectfully requests the Review Panel render a decision allowing the rejected claims.

Conclusion

Applicant respectfully requests the Review Panel render a decision allowing the rejected claims.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: August 19, 2009

By / William W. Schaal/
William W. Schaal
Reg. No. 39,018
Tel.: (714) 557-3800 (Pacific Coast)

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040